

No. 4103

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

SIU SAY,

Appellant,

VS.

JOHN D. NAGLE, as Commissioner of Immigration for the Port of San Francisco,

Appellee.

BRIEF FOR APPELLANT.

JOSEPH P. FALLON,

Attorney for Appellant.

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Statement of the Case.

This is an appeal from the order and judgment of the lower court sustaining the demurrer interposed and denying a petition for a writ of habeas corpus.

Siu Mooy Chew, a Chinese boy, made application to enter the United States on the 19th day of April, 1923, at the port of San Francisco as the minor son of Siu Say, a domiciled Chinese merchant of Suisun, California.

The mercantile status of the father, Siu Say, is conceded. Siu Mooy Chew was refused and denied admission by the Secretary of Labor on the ground that the claimed relationship of Siu Mooy Chew to

the said Siu Say had not been established to the satisfaction of the said Secretary of Labor.

Specification of Errors.

1. That the hearing accorded the applicant was unfair for the reason that the immigration authorities approached the matter of the relationship of father and son in a prejudiced state of mind and that fact precluded a fair and impartial hearing.

2. That the action of said officials was not consistent with the fundamental principles of justice as embraced within the concept of due process of law.

Argument.

The applicant, Siu Mooy Chew, was entitled to a hearing in good faith and if any unfairness was manifested by the examining officers at any stage of the proceedings to determine his right to enter, the hearing was without due process of law.

“The decision must be after a hearing in good faith, however summary.” *Chin Yow v. United States* (208 U. S. 12; 28 Sup. Ct. 201, 52 L. Ed. 369); “and it must find adequate support in the evidence.” *Zakmaite v. Wolf* (226 U. S. 272, 274; 33 Sup. Ct. 57, L. Ed. 218).

That the inspector assigned to hear and report the case as to the relationship of father and son, and upon whose report the final decision of the Secretary

of Labor was based, was prejudiced and unfair, is indicated in his report. The father's mercantile status was investigated at his place of business at Suisun, California, but because he elected to have the question of relationship decided at Angel Island, the inspector commented as follows:

“I believe the reason the hearing of this case on relationship was asked to be done at the Island was for the purpose of coaching. This is brought out very forcibly by the testimony of the applicant on re-examination in the case of an alleged sister of the alleged father. It will be noted how absolutely in ignorance the applicant was on this subject when first examined April 26th. Now (May 18th), without any help whatever from the outside, he claims to have all of the knowledge on this person.”

How can an official who entertains such an opinion give an applicant a fair trial?

That the Secretary of Labor recognized the unfair attitude on the part of the examining inspector is shown by the final decision of the Department on page 60, Exhibit “A”, which reads as follows:

“It appears that the alleged father has a sister. The applicant on his original examination was closely questioned on this point and had no knowledge whatever of his father's sister. On re-examination, however, after his alleged father had testified he testified regarding his sister, his only explanation for not mentioning her in the previous examination being that he had first given her as a cousin and did not want to change, fearing that a wrong conclusion would be drawn if he did. In connection with the fact that the alleged father and the applicant testi-

fied at Angel Island rather than being examined on the relationship feature at Suisun, Inspector Wurm has indulged in some unwarranted speculation and inference. He concludes that because these persons were presented at Angel Island they were brought to San Francisco in order that coaching might be resorted to, and he apparently also assumes that it was necessary to bring them to San Francisco in order to get into unauthorized conversation with the applicant. The Board of Review can find nothing whatever in the record to support the inference and Inspector Wurm's argument is labored and without apparent reason. Apparently it is nothing more than suspicion."

The most important part of the proceedings conducted by the immigration authorities relative to the right of aliens to enter the United States is the primary examination and if that is conducted in an unfair and prejudiced state of mind by the officers assigned to that duty, it vitiates the whole investigation, and will preclude any applicant from presenting convincing proof of his claims.

We respectfully request that the order of the District Court denying the issuance of the writ of habeas corpus be reversed, and that the writ of habeas corpus issue as prayed for.

Dated, San Francisco,

November 19, 1923.

Respectfully submitted,

JOSEPH P. FALLON,

Attorney for Appellant.